



# *Administrative Office of the Courts*

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## **MEMORANDUM**

(7/22/15)

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 18<sup>th</sup> edition of the book was published in 2014. The Administrative Office of the Courts' website includes Word and WordPerfect "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created and/or substantially revised instructions, are attached to the memorandum which appears on the AOC's website. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website.

### **6.02(a) – Aggravated Assault (for offenses committed on or after 7/1/13)**

- a) Under Part A, element 2(c), before the current language, add the following phrase in bold: **"only for offenses committed prior to 7/1/15:"**
- b) Under Part A, element 2(c), after the current language, add the word "or" on the next line, centered; then add the following:  
**"only for offenses committed on or after 7/1/15: that [the act involved strangulation] [strangulation was attempted]. FN**
- c) Add a new footnote to the above new paragraph with the following text and renumber the remaining footnotes:  
**"The trial judge may wish to charge criminal attempt in appropriate fact situations. See T.P.I. – Crim. 4.01, Criminal attempt."**
- d) Under Part B, element 3(c), before the current language, add the following phrase in bold: **"only for offenses committed prior to 7/1/15:"**
- e) Under Part B, element 3(c), after the current language, add the word "or" on the next line, centered; then add the following:  
**"only for offenses committed on or after 7/1/15: that [the act involved strangulation] [strangulation was attempted]. FN**
- f) Add a new footnote to the above new paragraph with the following text and renumber the remaining footnotes:

“The trial judge may wish to charge criminal attempt in appropriate fact situations. *See* T.P.I. – Crim. 4.01, Criminal attempt.”

- g) The definition of “strangulation” should be changed to the following two paragraphs: (the text of the footnote remains the same as current footnote 18. It will have a new number, as noted above, due to renumbering. It should be placed at the end of the second paragraph)

**[Only for offenses committed prior to 7/1/15:** “Strangulation” means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.]

or

**[Only for offenses committed on or after 7/1/15:** “Strangulation” means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck by blocking the nose and mouth of another person, regardless of whether that conduct results in any visible injury or whether the person has any intent to kill or protractedly injure the victim.]FN

#### **6.04- Vehicular Assault**

- a) Add the following paragraph to Comment One after the existing current language:
- “... For a first offense committed on or after 7/1/15, there is a mandatory minimum sentence of forty-eight (48) consecutive hours of incarceration before a defendant can qualify for diversion, T.C.A. §40-35-313(a)(1)(B)(i)(c), or is eligible for release on probation. If the defendant has one (1) prior conviction for an alcohol-related offense (defined as DUI, vehicular assault, vehicular homicide as a result of intoxication or aggravated vehicular homicide), there is a mandatory minimum sentence of forty-five (45) consecutive days of incarceration. If the defendant has any combination of two (2) prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred twenty (120) consecutive days of incarceration. If the defendant has any combination of three (3) or more prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred fifty (150) consecutive days of incarceration. The trial judge should utilize T.P.I.-Crim. 6.04(a) when submitting prior offenses to the jury in a bifurcated proceeding. T.C.A. §39-13-106(b). *See also* T.P.I.-Crim 42.19, Inferences.”

#### **6.04(a) – Vehicular [Assault] [Homicide] Supplemental Instruction Number one**

- a) Insert the language in attachment one to this memorandum as new instruction 6.04(a).

#### **6.05 – Aggravated Vehicular Assault**

- a) Insert the language in attachment two to this memorandum as new instruction 6.05.

#### **7.05(b) – Second Degree Murder (drugs as a proximate cause)**

- a) Add to the text of footnote 2 after the first sentence, “See also Tenn. Op. Att’y Gen. No. 14-72, 2014 Tenn. AG Lexis 74 (July 23, 2014).”

#### **7.08(b) – Vehicular Homicide (intoxication)**

- a) Add the following paragraph to Comment One after the existing current language:

“... For a first offense committed on or after 7/1/15, there is a mandatory minimum sentence of forty-eight (48) consecutive hours of incarceration before a defendant is eligible for release on probation. If the defendant has one (1) prior conviction for an alcohol-related offense (defined as DUI, vehicular assault, vehicular homicide as a result of intoxication or aggravated vehicular homicide), there is a mandatory minimum sentence of forty-five (45) consecutive days of incarceration. If the defendant has any combination of two (2) prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred twenty (120) consecutive days of incarceration. If the defendant has any combination of three (3) or more prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred fifty (150) consecutive days of incarceration. The trial judge should utilize T.P.I.-Crim. 6.04(a) when submitting prior offenses to the jury in a bifurcated proceeding. T.C.A. §39-13-106(b). *See also* T.P.I.-Crim 42.19, Inferences.”

#### **7.08(c) – Vehicular homicide (.08% alcohol concentration)**

- a) Add the following paragraph to Comment One after the existing current language:

“... For a first offense committed on or after 7/1/15, there is a mandatory minimum sentence of forty-eight (48) consecutive hours of incarceration before a defendant is eligible for release on probation. If the defendant has one (1) prior conviction for an alcohol-related offense (defined as DUI, vehicular assault, vehicular homicide as a result of intoxication or aggravated vehicular homicide), there is a mandatory minimum sentence of forty-five (45) consecutive days of incarceration. If the defendant has any combination of two (2) prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred twenty (120) consecutive days of incarceration. If the defendant has any combination of three (3) or more prior convictions for an alcohol-related offense, there is a mandatory minimum sentence of one hundred fifty (150) consecutive days of incarceration. The trial judge should utilize T.P.I.-Crim. 6.04(a) when submitting prior offenses to the jury in a bifurcated proceeding. T.C.A. §39-13-106(b). *See also* T.P.I.-Crim 42.19, Inferences.”

#### **7.11- Aggravated Vehicular Homicide**

- a) Add the following language after the existing language in Comment one:

“There shall be no release eligibility for a person committing this offense **on or after July 1, 2015**, until the person has served sixty percent (60%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by §41-21-236, or any other law, shall operate to reduce below forty-five percent (45%) the percentage of sentence such person must serve before becoming release eligible. T.C.A. §40-35-501(k)(8).
- b) Add the following paragraph before the definition of “prior conviction”:

“Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine

whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.” FN

- c) Add a new footnote to the above paragraph with the following text and next sequential number and renumber the remaining footnotes accordingly:  
“T.P.I.-Crim 42.19, Inferences.”

### **10.03 – Aggravated Sexual Battery**

- a. Delete the full text of the instruction and insert the language from the third attachment to this memorandum.

### **10.04- Sexual battery**

- a. Add the word “intentional” in element (1) before “unlawful sexual contact” in the first sentence.
- b. Add the word “intentional” in element (1) before “unlawful sexual contact” in the second sentence (second option).
- c. Add the word “intentional” in element (2)(b) before the “sexual contact”
- d. Add the words “intentionally or knowingly” in element (2)(d) before “accomplished sexual contact...”
- e. Change the bracketed sentence after element 3 to read “[See footnote 2 below].”
- f. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”
- g. Remove the words “and footnote 4” at the end of footnote 2.
- h. Delete footnote 4 and renumber all other footnotes accordingly.

### **10.04(a) – Sexual Battery by authority figure (only for offenses committed prior to 7/1/06)**

- a. Delete the full text of the instruction and insert the language from the fourth attachment to this memorandum.

### **10.04(b) – Sexual Battery by authority figure (only for offenses committed on or after 7/1/06)**

- a. Add the word “intentional” in element (1) before “unlawful sexual contact” in the first sentence.
- b. Add the word “intentional” in element (1) before “unlawful sexual contact” in the second sentence (second option).
- c. At the end of element (2)(a), add the phrase, “and the defendant acted intentionally, knowingly, or recklessly with regard to the age of the alleged victim”
- d. At the end of element (2)(b), add the phrase, “and the defendant acted intentionally, knowingly, or recklessly with regard to the mental defect, mental incapacity, or physical helplessness of the alleged victim”
- e. In element (3)(a), add the phrase, “intentionally, knowingly, or recklessly” before “used such position of trust...”
- f. In element (3)(b), add the phrase, “intentionally, knowingly, or recklessly” before “used such power to accomplish...”
- g. In element (3)(c), add the phrase, “intentionally, knowingly, or recklessly” before “used such authority to accomplish...”
- h. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”
- i. Delete the “and” between element (3)(c) and element (4) and completely delete element (4).
- j. Delete “and footnote 4” from footnote 2.
- k. Delete footnote 4 and renumber all other footnotes accordingly.

#### **10.05(d) – Statutory Rape by an Authority Figure**

- a. At the end of element 2, add the following phrase “and the defendant was at least four (4) years older than the victim;”
- b. Delete the text of element 3 and renumber the remaining elements accordingly.
- c. After the first sentence in element (4)(a) [new (3)(a)] , add the following sentence in brackets and italics:

*[The determination as to whether or not the defendant was “in a position of trust” with the alleged victim depends not on the length or formality of the relationship, but on the nature of the relationship. You should look to see whether the defendant formally or informally stood in a relationship to the alleged victim that promoted confidence, reliability or faith.](INSERT FN 2 WITH THE TEXT BELOW and RENUMBER ALL SUBSEQUENT FOOTNOTES);*

- d. Add footnote 2 to the above new paragraph. The text of footnote 2 should read as follows:

The trial judge may wish to add this bracketed definition, depending on the facts and circumstances of the case, if needed. *See State v. Brian Caswell McGrowder*, No. M2013-01184-CCA-R3-CD, at \*17 n. 2 (Tenn. Crim. App. Nashville, 9/23/14).

#### **10.07 – Spousal sexual battery (for offenses committed prior to 6/18/05)**

- a. Add the word “intentional” in element (1) before “unlawful sexual contact” in the first sentence.
- b. Add the word “intentional” in element (1) before “unlawful sexual contact” in the second sentence (second option).
- c. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”.
- d. Delete the current text of footnote 4 and replace with “Id.”
- e. Delete footnote 5 and renumber all other footnotes accordingly.

#### **10.11- Indecent Exposure**

- a. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”.

#### **10.12 – [Aggravated] Rape of a child**

- a) At the end of the current text of footnote 2, add the following case citation “State v. Clark, 452 S.W.3d 268, 297 (Tenn. 2014)”.

#### **10.17(b)- Violation of sex offender residential or work restriction**

- a) Add the following as a new subsection (m) to element 2:  
“(m) **only for offenses committed on or after 7/1/15:** that the defendant was alone with a minor or minors in a private area.”
- b) Add the following definition in brackets before the definition of “Conviction”:  
[“Alone with” means one (1) or more offenders covered by this subsection is in the presence of a minor or minors in a private area; and  
(i) There is no other adult present in the area:

- (ii) There is another adult present in the area but the adult is asleep, unconscious, or otherwise unable to observe the offender and the minor or minors;
- (iii) There is another adult present in the area but the adult present is unable or unwilling to come to the aid of the minor or minors or contact the proper authorities, if necessary; or
- (iv) There is another adult present in the area but the adult is also a sexual offender or violent sexual offender mandated to comply with the requirements of this chapter.

If the offender is in a private area where the offender has the right to be, the offender is not “alone with” a minor or minors if the offender is engaged in an otherwise lawful activity and the presence of the minor or minors is incidental, accidental, or otherwise unrelated to the offender’s lawful activity.]

- c) Add the next sequentially numbered footnote to the above definition and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:  
“T.C.A. §40-39-211(k)(1).”
- d) Add the following definition in brackets after the definition of “Owner”:  
[“Private area” means in or on any real or personal property, regardless of ownership, where the conduct of the defendant is not readily observable by anyone but the minor or minors alone with the offender. If the private area contains multiple rooms, such as a hotel, motel, or other place of temporary lodging, any room, rooms, or other area that the offender occupies with a minor or minors and that otherwise meets the requirements of this definition shall be considered a private area.]
- e) Add the next sequentially numbered footnote to the above definition and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:  
“T.C.A. §40-39-211(k)(1).”
- f) Change the first line of the second defense (second paragraph under element 2(l), which currently begins “[It is a defense to residing where a minor resides...]” to the following:

“[It is a defense to *[residing where a minor resides]* *[being alone with a minor]*...”

#### **10.18- Sexual contact with probationer or parolee**

- a. Add the word “intentional” in element (2) before “unlawful sexual contact” in the first sentence.
- b. Add the word “intentional” in element (2) before “unlawful sexual contact” in the second sentence (second option).
- c. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”.

#### **10.19- Sexual contact with inmates (for offenses committed on or after 7/1/06)**

- a. Add the word “intentionally” in element 2 after “defendant” and before “engaged” in the first line.
- b. At the end of element 2, delete the phrase “with a prisoner or inmate who was in custody at a penal institution, whether the conduct occurred on or off the grounds of the institution;”
- c. Delete the current text of element 3, and replace with the following:

- “(3) that the alleged victim was a prisoner or inmate who was in custody at a penal institution, whether the conduct occurred on or off the grounds of the institution and the defendant acted intentionally, knowingly, or recklessly with regard to whether the prisoner or inmate was in custody;”
- d. Change the word “includes” to “means” in the definition of “sexual contact” to read “Sexual contact means the intentional touching...”.
  - e. Delete the text “and footnote 4” at the end of footnotes 2 and 3.
  - f. Delete footnote 4 and renumber all others accordingly.

#### **10.21 – Sexual Contact by an Authority Figure**

- a. Delete the full text of the instruction and insert the language from the fifth attachment to this memorandum.

#### **12.02 – Intentional Killing of an animal**

- a) After element 4, add the word with a preceding bracket “[and” on the next line, centered
- b) After the newly added “[and”, add the following as element 5:  
“**only for offenses committed on or after 5/8/15:** that the animal was a *[police dog] [fire dog] [search and rescue dog] [police horse.]*”
- c) Delete the current text of comment one and replace with the following language:  
“Intentional killing of an animal is punished as theft under T.C.A. §39-14-105. T.C.A. §39-14-205(a). However, for offenses committed on or after 5/8/15, if the animal was a police dog, fire dog, search and rescue dog, or police horse, it is a Class E felony, unless the offense would be a higher classification based on the animal’s value, in which case it would still be punished as theft. See the comment to T.P.I. – 11.01, Theft of property, and 11.03(a), Fixing Value.

#### **12.03 – Cock, dog, and animal fighting (spectator)**

- a) Delete the full text of the instruction and insert the language from the sixth attachment to this memorandum.

#### **14.04 – Vandalism**

- a) Delete the full text of the instruction and insert the language from the seventh attachment to this memorandum.

#### **14.06 – Aggravated criminal trespass**

- a. After the word “entry” in element (2), add “or remaining”.

#### **14.07(a) – Aggravated criminal trespass of a habitation, hospital or school campus**

- a. After the word “entry” in element (2), add “or remaining”.

#### **17.02- Possession of explosive components**

- a) Add the following as a new paragraph to the end of the current language of the instruction:  
[**Only for offenses committed on or after 5/8/15:** It is a defense to prosecution for this offense that the component part of an explosive was solely intended to be used in creating an

exploding target for use in lawful sporting activity, and the part was possessed by a person eighteen (18) years of age or older.]

- b) Add the next sequentially numbered footnote to the above new paragraph. The following should be the language of the footnote:

“T.C.A. §39-14-702(c).”

#### **27.05(b)- Evading arrest while operating motor vehicle**

- a. In element (3), after “defendant”, add a comma and the phrase “while operating such vehicle,”.

#### **29.14(b)- [Abuse] [Neglect] [Exploitation] of adult (for offenses committed on or after 6/11/07)**

- a) After the definition for “Protective services”, add the following paragraph as a new definition:  
“Relative” means spouse; child, including stepchild, adopted child or foster child; parents, including stepparents, adoptive parents or foster parents; siblings of whole or half-blood; step-siblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces and nephews.
- b) Add the next sequentially numbered footnote to the above paragraph and renumber any remaining footnotes appropriately. The text of the footnote should be the following:  
“T.C.A. §71-6-102(12).”

#### **29.14(c)- Financial Exploitation of an Adult (for offenses committed on or after 7/1/15)**

- a) Insert the language in the eighth attachment to this memorandum as new instruction 29.14(c).

#### **30.12(a) – Stalking (for offenses committed on or after 7/1/2005)**

- a) Change the current text of footnote 4 to read as follows:  
“T.C.A. §39-17-315(f); T.P.I.-Crim. 42.19, Inferences.”

#### **30.12(b) – Aggravated Stalking (for offenses committed on or after 7/1/05)**

- a) Change the current text of footnote 3 to read as follows:  
“T.C.A. §39-17-315(f); T.P.I.-Crim. 42.19, Inferences.”

#### **30.12(c)- Especially Aggravated Stalking (for offenses committed on or after 7/1/05)**

- a) Change the current text of footnote 3 to read as follows:  
“T.C.A. §39-17-315(f); T.P.I.-Crim. 42.19, Inferences.”

#### **30.15 – Terrorism**

- a. After the bracketed paragraph that begins [“Coercion” means a threat...], and before the paragraph that begins “[It is not...]” add the following as a new paragraph:



[“Intimidate” means to use unlawful coercion, duress; to put in fear.](INSERT FN 4 WITH THE TEXT BELOW and RENUMBER ALL SUBSEQUENT FOOTNOTES);

- b. Add footnote 4 to the above new paragraph. The text of footnote 4 should read as follows:

*Black’s Law Dictionary* (8<sup>th</sup> Ed. 2004).

- c. Delete the phrase that begins [“Coercion” means a threat, however communicated...” and substitute the following text: [“Coerce” means to make a threat, however communicated...

### **31.03 – Unlawful possession of drug paraphernalia**

- a) Add the following paragraph to the end of the instruction:  
[**Only for offenses committed on or after 7/1/15:** It is a defense to prosecution for this offense that the defendant possessed a hypodermic needle or other sharp object that might have cut or punctured an officer during a search, and the defendant alerted the law enforcement officer of such before the search. This defense does not apply to possession of any other drug paraphernalia that was present and found during the search. The trial judge may ask the State to elect which items may be considered for a count of unlawful possession of drug paraphernalia.]
- b) Add the next sequentially numbered footnote to the above paragraph. The text of the footnote should be as follows:  
“T.C.A. §40-7-124.”

### **31.05(a) – Simple possession or casual exchange supplemental instruction number one**

- a) Add a new footnote, next sequential number, at the end of the sixth paragraph which begins ... Any record of prior convictions...
- b) Insert the following as text of the new footnote:  
“T.P.I.- Crim. 42.19, Inferences”

### **36.01 – Weapons: Possessing, manufacturing, transporting, repairing or selling prohibited**

- a) Add the following two new paragraphs to the end of the instruction:  
  
[**Only for offenses committed on or after 5/8/15:** It is a defense to prosecution for this offense that the [possession] [manufacture] [transport] [repair] [sale] of the explosive was by a person eighteen (18) years of age or older, and was incident to creating or using an exploding target for lawful sporting activity, as solely intended by the commercial manufacturer.]  
  
[**Only for offenses committed on or after 4/9/15:** It is an exception to this offense that the person acquiring or possessing a [machine gun] [short-barrel] [rifle] [shotgun] [firearm silencer] is in full compliance with the requirements of the National Firearms Act, codified in 26 U.S.C., Sections 5841-2862.]”
- b) Add the next sequentially numbered footnotes to each of the above paragraphs. The text of the footnote to the first paragraph should have the following text:  
“T.C.A. §39-17-1302(e).”

The text of the footnote to the second paragraph above should have the following text:

“T.C.A. §39-17-1302(d).”

### **36.04- Possessing or carrying weapons on public parks, civic centers, recreational buildings and grounds**

- a) Delete the long paragraph (second to last) which begins “[It is an exception to this offense...” and replace it with the following language and keep the same footnotes:

“[It is an exception to this offense that the defendant insert an exception listed in T.C.A. §39-17-1311. If the defendant proves this exception by a preponderance of the evidence, you must find *[him] [her]* not guilty.]”

### **36.06(c)- Unlawful [possession] [employment] of a firearm [with intent to go armed] during the [commission of or attempt to commit] [flight or escape from the commission of or attempt to commit] a dangerous offense**

- a. Delete the current text of footnote 3 and replace with the following:  
“State v. Fayne, 451 S.W.3d 362 (Tenn. 2014).”

### **38.01 – Driving under the influence [accompanied by a child] [resulting in serious bodily injury] [resulting in the killing of a child] (for offenses committed on or after 7/1/13)**

- a) Delete the current text of element 2 and replace with the following:

“(2) **Only for offenses committed on or after 7/1/13 but prior to 4/9/15:** that this act occurred on a *[public road or highway] [shopping center] [trailer park] [apartment house complex] [location which is generally frequented by the public at large];*

or

**Only for offenses committed on or after 4/9/15:** that is act occurred *[on any public road or highway] [on any street or ally] [while on the premises of any [shopping center] [trailer park] [apartment house complex] [premises that is generally frequented by the public at large]];*”

- b) In the tenth line of the paragraph which begins “The expression ‘under the influence of...” correct the wording as following:  
“... in any form and which deprives the driver of that clearness of mind and control of oneself which the driver would otherwise possess.”

### **38.14(a)- Knowingly leaving the scene of an accident resulting in death**

- a) After element 4 and before the definition of “vehicle”, add the following new definition for “accident”:  
**Only for offenses committed on or after 7/1/15:** “Accident” includes any collision or crash, regardless of the degree of care exercised by the drivers involved or whether it was the result of criminal conduct.
- b) After the new definition, add the next sequentially numbered footnote and renumber all remaining footnotes. The text of the new footnote should be as follows:  
“T.C.A. §55-10-101(d).”

### **38.14(b)- Leaving the scene of an accident resulting in injury or death**

- a) After element 3 and before the definition of “vehicle”, add the following new definition for “accident”:  
**Only for offenses committed on or after 7/1/15:** “Accident” includes any collision or crash, regardless of the degree of care exercised by the drivers involved or whether it was the result of criminal conduct.

- b) After the new definition, add the next sequentially numbered footnote and renumber all remaining footnotes. The text of the new footnote should be as follows:  
“T.C.A. §55-10-101(d).”

**38.14(c)- Leaving the scene of an accident resulting in damage to a vehicle [exceeding four hundred dollars (\$400)]**

- a) Amend the title to reflect the following:  
“Leaving the scene of an accident resulting in damage to a vehicle [exceeding four hundred dollars (\$400)] [Only for offenses committed prior to 7/1/15]
- b) In the first paragraph, italicize the phrase in brackets: *[exceeding four hundred dollars (\$400)]*
- c) After element 4 and before the definition of “vehicle”, add the following new definition for “accident”:  
**Only for offenses committed on or after 7/1/15:** “Accident” includes any collision or crash, regardless of the degree of care exercised by the drivers involved or whether it was the result of criminal conduct.
- d) After the new definition, add the next sequentially numbered footnote and renumber all remaining footnotes. The text of the new footnote should be as follows:  
“T.C.A. §55-10-101(d).”

**38.14(d) – Leaving the scene of an accident resulting in damage to a vehicle [Exceeding five hundred dollars (\$500)] [Only for offenses committed on or after 7/1/15]**

- a) Insert the language in the ninth attachment to this memorandum as new instruction 38.14(d).

**38.15(a)- Driving while license [cancelled] [suspended] [revoked] supplemental instruction number one**

- a) Add a new footnote, next sequential number, at the end of the sixth paragraph which begins ... Any record of prior convictions...
- e) Insert the following as text of the new footnote:  
“T.P.I.- Crim. 42.19, Inferences.”

**38.15(b) – Driving while license [cancelled] [suspended] [revoked] supplemental instruction number two**

- a) Add a new footnote, next sequential number, at the end of the sixth paragraph which begins ... Any record of prior convictions...
- b) Insert the following as text of the new footnote:  
“T.P.I.- Crim. 42.19, Inferences.”

**38.19- Violation of financial responsibility law**

- a) After the definition of “motor vehicle” and before the definition of “criminal negligence”, add the following new definition for “accident” in brackets:  
**[Only for offenses committed on or after 7/1/15:** “Accident” includes any collision or crash, regardless of the degree of care exercised by the drivers involved or whether it was the result of criminal conduct.]
- b) After the new definition, add the next sequentially numbered footnote and renumber all remaining footnotes. The text of the new footnote should be as follows:  
“T.C.A. §55-10-101(d).”

#### **42.18 - Flight**

- a. In the first sentence of the first paragraph, after “crime” insert the following text in brackets and italics: *[other than evading arrest]*(INSERT FN 1 AFTER THIS PHRASE WITH THE TEXT BELOW AND RENUMBER ALL SUBSEQUENT FOOTNOTES)
- b. Add FN 1 after the newly added bracketed phrase in the first sentence of the instruction. The text of FN 1 should read as follows: See Comment One.
- c. Add the following as Comment One:
  1. Several unpublished cases have held that it is error to charge Flight when trying the offense of Evading Arrest, T.P.I. – Crim. 27.05 or Evading Arrest while Operating Motor Vehicle, T.P.I.-Crim. 27.05(b). If Evading Arrest is being tried along with other offenses for which the flight instruction is applicable, the bracketed language should be charged so that the jury will limit the applicability of the flight charge to the other offenses. See *State v. Michael Smith*, 2014 Tenn. Crim. App. Lexis 794, at \*15 (Tenn. Crim. App. Aug. 13, 2014).

#### **42.22– Evidence of Mental State**

- g. Delete the full text of the instruction and insert the language from the tenth attachment to this memorandum.

#### **43.13 – Supplemental instruction No. [ ]**

- a. Add the following as Comment One to the instruction:
  1. Any supplemental instruction should be read to the jury in open court before giving it to them in writing, rather than simply sending the instruction back to the jury in the jury room. Although trial courts have “the authority to respond to jury questions with a supplemental instruction,” *State v. Forbes*, 918 S.W. 2d 431, 451 (Tenn. Crim. App. 1995), the “appropriate course of action” for a trial court responding to a jury question is to “bring the jurors back into open court, read the supplemental instruction ... along with a supplemental instruction emphasizing that the jury should not place undue emphasis on the supplemental instruction, and then allow the jury to resume its deliberations.” *State v. Bowers*, 77 S.W. 3d 776, 771 (Tenn. Crim. App. 2001).